

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

Supreme Court No.: 154764

Court of Appeals No.: 325407

Circuit Court No.: 13-40406-FH

vs.

LONNIE JAMES ARNOLD,

Defendant-Appellee.

MICHAEL C. BROWN (P64169)

Assistant Prosecuting Attorney
Attorney for Plaintiff-Appellant
125 East Second Street
Monroe, Michigan 48161
(734) 240-7600

MARILENA DAVID-MARTIN (P73175)

Attorney for Defendant-Appellee
645 Griswold Street
3300 Penobscot Building
Detroit, Michigan 48226
(313) 256-9833

BILL SCHUETTE (P32532)

Michigan Attorney General
Criminal Appellate Division
P.O. Box 30212
Lansing, Michigan 48909
(517) 373-4875

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	ii
INDEX OF AUTHORITIES	iii
STATEMENT OF JURISDICTION.....	iv
STATEMENT OF ISSUES PRESENTED	v
STATEMENT OF FACTS.....	vi
ARGUMENT.....	1
I. THE CIRCUIT COURT PROPERLY SENTENCED THE APPELLEE TO A SENTENCE WITHIN THE SENTENCING GUIDELINE RANGE.....	1
II. THIS COURT’S DECISION IN <i>PEOPLE V LOCKRIDGE</i> DID NOT EFFECT THE SENTENCING OPTIONS IN SEXUALLY DELINQUENT PERSON CASES.....	5
III. THE MICHIGAN COURT OF APPEALS IMPROPERLY DECIDED <i>PEOPLE V CAMPBELL</i>.....	8
STATEMENT OF RELIEF	12

INDEX OF AUTHORITIES

Cases

<i>In re Brown</i> , 229 Mich App 496 (1998)	2
<i>Paradise v Detroit Entertainment, LLC</i> , 295 Mich App 25 (2011)	4
<i>People v Budnick</i> , 197 Mich App 21 (1992)	2
<i>People v Buehler</i> (On Remand), 271 Mich App 653 (2006)	1, 2, 3, 8
<i>People v. Buehler</i> , 477 Mich 18 (2007) (<i>Buehler II</i>)	9
<i>People v Campbell</i> , 316 Mich App 279 (2016)	3, 8, 10
<i>People v Coles</i> , 417 Mich 523 (1983)	6
<i>People v Ellis</i> , 224 Mich App 752 (1997)	2
<i>People v Lockridge</i> , 498 Mich 358 (2015)	3, 5, 6, 7, 9, 10
<i>People v Milbourn</i> , 435 Mich 630 (1990)	6, 7
<i>People v Ramsdell</i> , 230 Mich App 386 (1998)	4
<i>People v Schultz</i> , 435 Mich 517 (1990)	1, 5, 8
<i>U.S. v Booker</i> , 543 U.S. 220 (2005)	5, 6, 10

Statutes

MCL 750.335a	2, 8, 9
MCL 750.335a(2)(c)	1, 3, 8, 9
MCL 769.34	3, 9
MCL 769.34(2)	5
MCL 769.34(3)	5
MCL 777.16q	1, 3, 4, 6, 8

Public Acts

Public Act 300 of 2005	3
Public Act 164 of 2006	4, 9, 10

STATEMENT OF JURISDICTION

This is an appeal from a decision of the Court of Appeals which ordered the case remanded to the sentencing court for resentencing for imposition of a sentence of one day to life. Jurisdiction of the Supreme Court is pursuant to leave granted by the Court as to three questions, pursuant to and as stated in the Order dated April 5, 2017.

<u>Name of Document or Event</u>	<u>Date Signed or Served</u>
Date of Sentence	July 10, 2014
Entry of Amended Judgment of Sentence	August 8, 2014
Claim of Appeal Filed	January 6, 2015
Unpublished Opinion of Court of Appeals	April 12, 2016
Order Vacating Opinion	July 12, 2016
Unpublished Opinion of Court of Appeals on Reconsideration	September 22, 2016
Application for Leave to Appeal to the Michigan Supreme Court by Plaintiff	November 17, 2016
Order of the Michigan Supreme Court granting leave to appeal to address three issues	April 5, 2017

The jurisdiction of the Michigan Supreme Court is pursuant to MCR 7.303(B)(1) due to the April 5, 2017 Order of the Court granting leave to appeal.

STATEMENT OF QUESTIONS PRESENTED

I. MAY A SENTENCING COURT SENTENCE A DEFENDANT CONVICTED OF BEING A SEXUALLY DELINQUENT PERSON TO A SENTENCE WITHIN THE APPLICABLE SENTENCING GUIDELINE RANGE?

Plaintiff-Appellant answers this question		"Yes"
Defendant-Appellee answers this question	"No"	
Court of Appeals answers this question	"No"	

II. DID THIS COURT'S DECISION IN *PEOPLE V LOCKRIDGE* AFFECT THE SENTENCING OPTIONS IN SEXUALLY DELINQUENT PERSON CASES?

Plaintiff-Appellant answers this question	"No"	
Defendant-Appellee answers this question		"Yes"
Court of Appeals answers this question		"Yes"

III. DID THE MICHIGAN COURT OF APPEALS IMPROPERLY DECIDE *PEOPLE V CAMPBELL*?

Plaintiff-Appellant answers this question		"Yes"
Defendant-Appellee answers this question	"No"	

STATEMENT OF FACTS

The Appellee was charged by the Monroe County Prosecuting Attorney on January 16, 2013 with the crimes of Aggravated Indecent Exposure and Indecent Exposure by a Sexually Delinquent Person. (See Appendix 3a). A Preliminary Examination was held on May 13, 2013, and the Appellee was bound over to the 38th Circuit Court. *Id.*

Circuit Court

The Appellee was arraigned in Circuit Court on May 17, 2013. *Id.* The trials for both charges were bifurcated before different juries. The Aggravated Indecent Exposure trial was held on November 4 and 5, 2013. *Id.* The Appellee was found guilty of Aggravated Indecent Exposure on November 5, 2013. *Id.* The Sexually Delinquent Person trial was held on November 6 and 7, 2013. *Id.* The Appellee was found guilty on November 7, 2013. *Id.*

On July 10, 2014, he was sentenced to 2 to 15 years for the Aggravated Indecent Exposure conviction and 25 to 70 years for the Indecent Exposure by a Sexually Delinquent Person conviction. ST, 7/10/14, p. 16. (See Appendix 22a-23a).

Court of Appeals

The Appellee filed a Claim of Appeal on an appeal of right in the Michigan Court of Appeals on January 6, 2015. The Court of Appeals issued an unpublished opinion on January 12, 2016. (See Appendix, p. 26a). The court affirmed the Appellee's conviction for Indecent Exposure by a Sexually Delinquent Person. The court also vacated the Appellee's conviction and sentence for aggravated indecent exposure (the People confessed error on this issue). The case was remanded for a *Crosby* hearing. The court held that a trial court was not required to give a sentence of one day to life on a

conviction for Indecent Exposure by a Sexually Delinquent Person, and relied on a prior case addressing this issue, *Buehler II*, 271 Mich 653 (2006).

The Appellee filed a Motion for Reconsideration with the Court of Appeals on May 3, 2016 arguing that the Court of Appeals wrongly relied on *Buehler II*, due to an amendment to the Sexually Delinquent Person statute. While the motion was pending, the Court of Appeals held in a published case that a sentencing court must give a sentence of one day to life in prison for a conviction for Indecent Exposure by a Sexually Delinquent Person. *People v Campbell*, 316 Mich App 279 (2016).

The Court of Appeals vacated their prior opinion in this case and issued a new opinion on September 22, 2016. (See Appendix, p. 32a). The court held that the sentencing court was required to sentence a defendant to one day to life in prison for a conviction for Indecent Exposure by a Sexually Delinquent Person. The court ordered the case remanded for resentencing for imposition of a sentence of one day to life.

Michigan Supreme Court

The People filed an Application for Leave to Appeal with the Michigan Supreme Court on November 17, 2016. The Court granted leave on April 5, 2017. The People now file their Brief on Appeal.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY SENTENCED THE APPELLEE TO A SENTENCE WITHIN THE SENTENCING GUIDELINE RANGE.

Standard of Review

Questions of law pertaining to statutory construction and interpretation are reviewed *de novo*. *People v Schultz*, 435 Mich 517 (1990).

The Appellee in this case was convicted of Indecent Exposure by a Sexually Delinquent Person. The sentencing court sentenced the Appellee to 25 to 70 years in prison. The Court of Appeals vacated the sentence and ordered the sentencing court to resentence the Appellee to one day to life in prison, pursuant to MCL 750.335a(2)(c).

Question from the Court

This Court has asked the parties to address the following issue:

“whether MCL 750.335a(2)(c) requires the mandatory imposition of “imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life” for a person who commits the offense of indecent exposure by a sexually delinquent person, or whether the sentencing court may impose a sentence within the applicable guidelines range, see MCL 777.16q.”

The People will address this issue.

Argument

The Appellee in this case was convicted of Indecent Exposure by a Sexually Delinquent Person, contrary to MCL 750.335a(2)(c). The Penal Code states the following:

“If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.” *Id.*

The Michigan Court of Appeals addressed the issue of sentencing for this offense, pursuant to MCL 750.335a(2)(c), in a case remanded to them by this Court. *People v Buehler* (On Remand), 271 Mich

App 653 (2006), rev'd on other grounds 477 Mich 18 (2007). In that case, the Court of Appeals held that a sentencing court must abide by the sentencing guidelines in a sexually delinquent person case and not impose a sentence of one day to life unless there were substantial and compelling reasons for a downward departure. The court stated:

“It is a well-settled tenet of statutory construction that when a conflict exists between two statutes, the one that is more specific to the subject matter generally controls. *In re Brown*, 229 Mich App 496, 501, 582 N.W.2d 530 (1998). However, it is equally well settled that among statutes that are *in pari materia*, the more recently enacted law is favored. *People v. Ellis*, 224 Mich App 752, 756, 569 N.W.2d 917 (1997). The rules of statutory construction also provide that inconsistencies in statutes should be reconciled whenever possible. *People v Budnick*, 197 Mich App 21, 24, 494 N.W.2d 778 (1992).

Applying these rules to the instant case so as to reconcile the statutes at issue as nearly as possible, we find that even though MCL 750.335a is more specific with respect to the term of imprisonment that may be imposed for a conviction of indecent exposure as a sexually delinquent person, the intent of the Legislature is best expressed in the more recently enacted sentencing guidelines, which are therefore controlling when a trial court elects to impose imprisonment for such a conviction.” *Buehler II*, 271 Mich App 653, 658-659 (2006).

However, the Court of Appeals noted that they were addressing the statute prior to it being amended on December 21, 2005 and stated they had no opinion in the effect of the amendments. *Id.* at 659 n.

4.

The Michigan Court of Appeals recently addressed the effects of the amended statute in *People v Campbell*:

“Campbell now challenges whether the amended version of MCL 750.335a supersedes the sentencing guidelines. As our Supreme Court recognized, at the time the defendant in *Buehler* committed his crime, MCL 750.335a provided that the crime of indecent exposure as a sexually delinquent person “*may be punishable by imprisonment for an indeterminate term, the minimum of which shall be 1 day and the maximum of which shall be life...*” *Buehler*, 477 Mich. at 21 n 5 (emphasis added, quotation marks and citation omitted). But the 2005 amended version in effect when Campbell committed his crimes provided that the crime of indecent exposure

as a sexually delinquent person “is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.” 2005 PA 300, § 335a(2)(c) (emphasis added). Campbell argues that the change in statutory language from “may be punishable” to “is punishable” indicates that the Legislature intended the indeterminate sentence of one day to life to be a mandatory sentence, notwithstanding the sentencing guidelines.

We agree that the conflict between the statutory language provided under MCL 750.335a(2)(c) and the sentencing guidelines, MCL 769.34, must now be resolved in favor of applying MCL 750.335a(2)(c). Our Supreme Court has determined that the sentencing guidelines were unconstitutional to the extent that the guidelines required trial court's to determine a defendant's minimum sentence on the basis of facts “beyond those admitted by the defendant or found by the jury beyond a reasonable doubt...” *People v. Lockridge*, 498 Mich. 358, 364; 870 NW2d 502 (2015). Although the Supreme Court determined that the guidelines should still be scored by trial courts, it nevertheless held that the courts are no longer required to sentence a defendant to a minimum sentence within the range provided by the guidelines—that is, the guidelines are now merely advisory. *Id.* at 365. By contrast, the sentence provided under MCL 750.335a(2)(c) is stated in mandatory terms. Consequently, after the decision in *Lockridge*, trial courts must sentence a defendant convicted of indecent exposure as a sexually delinquent person consistent with the requirements of MCL 750.335a(2)(c).” *People v Campbell*, 316 Mich App 279 (2016).

The People disagree with the Court of Appeals’ holding in *Campbell*.

Public Act 300 of 2005

The Court of Appeals is correct that Public Act 300 of 2005 did change “**may** be punishable by imprisonment for an indeterminate term, the minimum of which shall be 1 day and the maximum of which shall be life...” to “**is** punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.” MCL 750.335a(2)(c). The Court of Appeals is also correct in that Public Act 300 of 2005 was passed after the Legislature passed the sentencing guidelines in 1999 and made Sexually Delinquent Person a Class A Felony under the guidelines. MCL 777.16q.

Public Act 164 of 2006

The Michigan Court of Appeals decision in *Campbell* fails to note that in 2006 the Michigan Legislature amended MCL 777.16q and the Legislature reaffirmed that Indecent Exposure by a Sexually Delinquent Person is a Class A Felony crime under the sentencing guidelines by failing to remove it. See 2006 PA 164, effective August 24, 2006 (See Appendix, p. 34a). If the Legislature had intended to remove the offense of Indecent Exposure by a Sexually Delinquent Person from MCL 777.16q, it would have done so in 2006. The Michigan Court of Appeal held that “[T]he rules of statutory construction also provide that a more recently enacted law has precedence over the older statute.” *Paradise v Detroit Entertainment, LLC*, 295 Mich App 25, 27-28 (2011). The Michigan Court of Appeals also held that “It is presumed that, when the Legislature enacts statutes, it is familiar with the rules of statutory construction and has knowledge of existing laws on the same subject.” *People v Ramsdell*, 230 Mich App 386, 393 (1998). It is clear it was the intention of the Legislature to maintain the offense of Indecent Exposure by a Sexually Delinquent Person as a Class A Felony under the Sentencing Guidelines. Therefore, the Legislature intended to have the sentencing guidelines apply to sentences for Indecent Exposure by a Sexually Delinquent Person.

Conclusion

The legislative history of the Penal Code and the sentencing guidelines clearly establishes the sentencing guidelines still apply to the offense of Indecent Exposure by a Sexually Delinquent Person, and a sentencing court may sentence a defendant to a sentence within the applicable guideline range.

II. THIS COURT’S DECISION IN *PEOPLE V LOCKRIDGE* DID NOT EFFECT THE SENTENCING OPTIONS IN SEXUALLY DELINQUENT PERSON CASES.

Standard of Review

Questions of law pertaining to statutory construction and interpretation are reviewed *de novo*. *People v Schultz*, 435 Mich 517 (1990).

The Michigan Supreme Court in 2015 held the Legislative Sentencing Guidelines were unconstitutional under the 6th Amendment. The Court held that the guidelines would continue to be used but would no longer be mandatory. The decision rendered the sentencing guidelines advisory and required sentences to be “reasonable.”

Question from the Court

This Court has asked the parties to address the following issue:

“whether the answer to this question is affect by this Court’s decision in *People v Lockridge*, 498 Mich 358 (2015).”

The People will address this issue.

Argument

This Court held two years ago Michigan’s mandatory sentencing guidelines violated the Sixth Amendment. *People v. Lockridge*, 498 Mich 358, 388-389 (2015). This Court held the remedy for the constitutional violation is:

“Accordingly, we sever MCL 769.34(2) to the extent that it is mandatory and strike down the requirement of a “substantial and compelling reason” to depart from the guidelines range in MCL 769.34(3). When a defendant's sentence is calculated using a guidelines minimum sentence range in which OV's have been scored on the basis of facts not admitted by the defendant or found beyond a reasonable doubt by the jury, the sentencing court may exercise its discretion to depart from that guidelines range without articulating substantial and compelling reasons for doing so. A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness. *Booker*, 543 U.S. at 261, 125 S.Ct. 738. Resentencing will be required when a sentence is determined to be unreasonable. Because sentencing

courts will hereafter not be *bound* by the applicable sentencing guidelines range, this remedy cures the Sixth Amendment flaw in our guidelines scheme by removing the unconstitutional constraint on the court's discretion. Sentencing courts must, however, continue to consult the applicable guidelines range and take it into account when imposing a sentence. Further, sentencing courts must justify the sentence imposed in order to facilitate appellate review. *People v. Coles*, 417 Mich. 523, 549, 339 N.W.2d 440 (1983), overruled in part on other grounds by *People v. Milbourn*, 435 Mich. 630, 644, 461 N.W.2d 1 (1990).” *Lockridge*, 498 Mich at 520-521.

In essence, this Court made the sentencing guidelines advisory instead of mandatory. This Court went on to hold:

“To preserve as much as possible the legislative intent in enacting the guidelines, however, we hold that a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence.” *Lockridge*, 498 Mich at 506.

“Like the Supreme Court in *Booker*, however, we conclude that although the guidelines can no longer be mandatory, they remain a highly relevant consideration in a trial court's exercise of sentencing discretion. Thus, we hold that trial courts “must consult those Guidelines and take them into account when sentencing.” *Booker*, 543 U.S. at 264, 125 S.Ct. 738. Such a system, while “not the system [the legislature] enacted, nonetheless continue [s] to move sentencing in [the legislature's] preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.” *Id.* at 264–265, 125 S.Ct. 738.” *Lockridge*, 498 Mich at 520.

The Court made clear that sentencing courts must continue to score the sentencing guidelines, consult the guidelines, and take the guidelines into account when sentencing.

The Code of Criminal Procedure clearly states the offense of Indecent Exposure by a Sexually Delinquent Person is an offense that the sentencing guidelines apply to. MCL 777.16q. *Lockridge* directs the sentencing court to score the guidelines, consult the guidelines, and take the guidelines into account for all applicable offenses. *Lockridge*, 498 Mich at 506, 520. If sentencing courts are mandated by MCL 750.355(a)(2)(c) to sentence a defendant convicted of the offense

Indecent Exposure by a Sexually Delinquent Person to one day to life in prison, the requirements of *Lockridge* are a farce on these cases.

Conclusion

The sentencing guidelines are still required to be scored, consulted, and be taken into account when sentencing defendants on offenses that the guidelines apply. *Id.* Therefore, the *Lockridge* decision did not have the effect of requiring sentencing courts to sentence defendants convicted of Indecent Exposure by a Sexually Delinquent Person to one year to life in prison.

III. THE MICHIGAN COURT OF APPEALS IMPROPERLY DECIDED *PEOPLE V CAMPBELL*.

Standard of Review

Questions of law pertaining to statutory construction and interpretation are reviewed *de novo*. *People v Schultz*, 435 Mich 517 (1990).

The Michigan Court of Appeals held in a published case that MCL 750.335a(2)(a) requires a sentence of one day to life for the crime of Indecent Exposure by a Sexually Delinquent Person. *People v Campbell*, 316 Mich App 279 (2016). It is the People's position that *Campbell* was incorrectly decided and should be overturned by this Court.

Question from the Court

This Court has asked the parties to address the following issue:

“whether *People v Campbell*, ___ Mich App ___ (2016) (Docket No. 324708), was correctly decided.”

The People will address this issue.

Argument

The Michigan Court of Appeals held in *Campbell* that the MCL 750.335(a)(2)(c) supersedes MCL 777.16q. The court stated the following:

“The issue here is whether MCL 750.335a or the statutory sentencing guidelines control Campbell's sentence for indecent exposure as a sexually delinquent person. This Court previously addressed the conflict between MCL 750.335a and the sentencing guidelines and determined that the sentencing guidelines should control because they were more recently enacted. *People v. Buehler (On Remand)*, 271 Mich.App. 653, 657–659, 723 N.W.2d 578 (2006) (*Buehler I*), rev'd on other grounds 477 Mich. 18, 727 N.W.2d 127 (2007). The Court in *Buehler I* noted that 2005 PA 300 amended MCL 750.335a, but because the offense in *Buehler I* occurred before the effective date of the amendment, the Court expressed no opinion as to whether the guidelines or MCL 750.335a controlled after the amendment. *Id.* at 659 n. 4, 723 N.W.2d 578. While reversing on other grounds, our Supreme Court agreed

that the guidelines controlled over the version of MCL 750.335a in effect at the time of the offense and agreed that it was unnecessary to determine whether the amended statute would alter that conclusion for future offenders. *People v. Buehler*, 477 Mich. 18, 24 n. 18, 727 N.W.2d 127 (2007) (*Buehler II*).

Campbell now challenges whether the amended version of MCL 750.335a supersedes the sentencing guidelines. As our Supreme Court recognized, at the time the *Buehler* defendant committed his crime, MCL 750.335a provided that the crime of indecent exposure as a sexually delinquent person “*may* be punishable by imprisonment for an indeterminate term, the minimum of which shall be 1 day and the maximum of which shall be life....” *Buehler II*, 477 Mich. at 21 n. 5, 727 N.W.2d 127 (emphasis added; quotation marks and citation omitted). But the 2005 amended version in effect when Campbell committed his crimes provided that commission of the crime of indecent exposure as a sexually delinquent person “*is* punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.” MCL 750.335a(2)(c), as amended by 2005 PA 300 (emphasis added). Campbell argues that the change in statutory language from “*may* be punishable” to “*is* punishable” indicates that the Legislature intended that the indeterminate sentence of one day to life be a mandatory sentence, notwithstanding the sentencing guidelines.

We agree that the conflict between the statutory language provided under MCL 750.335a(2)(c) and the sentencing guidelines, MCL 769.34, must now be resolved in favor of applying MCL 750.335a(2)(c). Our Supreme Court has determined that the sentencing guidelines were unconstitutional to the extent that the guidelines required trial courts to determine a defendant's minimum sentence on the basis of facts “beyond those admitted by the defendant or found by the jury beyond a reasonable doubt....” *People v. Lockridge*, 498 Mich. 358, 364, 870 N.W.2d 502 (2015). Although the Supreme Court determined that the guidelines should still be scored by trial courts, it nevertheless held that trial courts are no longer required to sentence a defendant to a minimum sentence within the range provided by the guidelines—that is, the guidelines are now merely advisory. *Id.* at 365, 870 N.W.2d 502. By contrast, the sentence provided under MCL 750.335a(2)(c) is stated in mandatory terms. Consequently, after the decision in *Lockridge*, trial courts must sentence a defendant convicted of indecent exposure as a sexually delinquent person consistently with the requirements of MCL 750.335a(2)(c).

The trial court erred when it failed to sentence Campbell consistently with MCL 750.335a(2)(c).” *Id.*

The Court of Appeals failed to address in any manner what affect Public Act 164 of 2006 had on this issue.

Public Act 164 of 2006

Public Act 164 of 2006 reaffirmed the Legislature's intent for Sexually Delinquent Person to be a Class A Felony under the sentencing guidelines. (See Appendix, p. 34a). This public act made clear that the Legislature intends for defendants convicted of being a Sexually Delinquent Person to be sentence under the guidelines. The People addressed in detail how reaffirmation of a statute by the Legislature is a tool of statutory construction. The Court of Appeals appeared to be unaware of the existence of Public Act 164 of 2006.

People v Lockridge

The Court of Appeals also failed to address the requirements this Court placed on sentencing courts under *Lockridge*. This Court held:

“To preserve as much as possible the legislative intent in enacting the guidelines, however, we hold that a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence.” *Lockridge*, 498 Mich at 506.

“Like the Supreme Court in *Booker*, however, we conclude that although the guidelines can no longer be mandatory, they remain a highly relevant consideration in a trial court's exercise of sentencing discretion. Thus, we hold that trial courts “must consult those Guidelines and take them into account when sentencing.” *Booker*, 543 U.S. at 264, 125 S.Ct. 738.

The effect of the *Campbell* decision is the sentencing court must render a mandatory sentence of one day to life after scoring the guidelines, consulting the guidelines, and taking the guidelines into account. *Campbell* makes the requirements of *Lockridge* a farce on Sexually Delinquent Person cases. Judges will be going through the motions of the *Lockridge* requirements without any purpose.

Conclusion

The Michigan Court of Appeals wrongly decided *People v Campbell*. The Court of Appeals

failed to address the effects of Public Act 164 of 2006 which reaffirmed Indecent Exposure by a Sexually Delinquent Person is a Class A Felony under the legislative sentencing guidelines. A sentence within the applicable guideline range is still permissible. Further, the Court of Appeals misinterpreted the effects of *People v Lockridge*. *Lockridge* still requires sentencing courts in Indecent Exposure by a Sexually Delinquent Person cases to score the guidelines, consult the guidelines, and taking the guidelines into account prior to deciding a sentence.

STATEMENT OF RELIEF REQUESTED

FOR ALL THE REASONS STATED ABOVE, the People of the State of Michigan respectfully request that this Honorable Court affirm the Circuit Court's sentence on the Offense of Indecent Exposure by a Sexually Delinquent Person.

Dated: May 31, 2017

_____/s/
Michael C. Brown (P64169)
Assistant Prosecuting Attorney
125 East Second Street
Monroe, Michigan 48161